



ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of this 29th day of June, 1999 by and between Linvatec Corporation, a Florida corporation (the "Buyer"), and Minnesota Mining and Manufacturing Company, a Delaware corporation ("3M").

WHEREAS, 3M, through its Medical Surgical Division (the "Division"), engages in the business of manufacturing and selling a broad range of surgical powered instrument products excluding those instruments that formed any portions of 3M's cardiovascular perfusion business, its orthopedic devices business, metal implant business and carpal tunnel release businesses, (the manufacture and sale of such products through such Division being herein called the "Business");

WHEREAS, 3M now desires to exit the Business without interrupting the availability of products and customer support and Buyer desires to purchase and acquire the assets of the Business, all on the terms and conditions set forth in this Agreement;

WHEREAS, Buyer wishes to purchase all assets used in or necessary to the Business, and to hire or otherwise retain the services of certain 3M employees or agents necessary to or used in the Business subject to the terms set forth herein;

WHEREAS, Buyer wishes to purchase the Business in a manner that causes as little disruption as possible to customers of and the profitability of the Business; and

WHEREAS, 3M now desires to sell and the Buyer desires to purchase and acquire certain assets of the Business, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

ARTICLE I

Definitions

1.01 Purchased Assets. The term "Purchased Assets" or any variation thereof as used in this Agreement shall mean the assets required to be sold, assigned, transferred and conveyed by 3M to the Buyer pursuant to Article II hereof.

1.02 3M Products. The term "3M Products" or "3M Product Line" or any variation thereof as used in this Agreement shall mean those 3M products manufactured or sold through the Division described in the attached Schedule 1.02.

1.03 Assumed Liabilities. The term "Assumed Liabilities" or any variation thereof as used in this Agreement shall mean the liabilities and obligations required to be assumed by the Buyer pursuant to Article IV hereof.

1.04 Purchased Intellectual Property. The term "Purchased Intellectual Property" means patents, patent applications, utility model registrations, design patents, registered or unregistered trademarks, trade secrets and know-how owned by 3M on the Closing Date that directly and solely relate to the Business as conducted on the Closing Date, with such products being listed in Schedule 1.04, but excluding components and materials supplied to the Business by other businesses of 3M.

1.05 Licensed Intellectual Property. The term "Licensed Intellectual Property" means patents, patent applications, utility model registrations, design patents, trade secrets and know-how owned by 3M on the Closing Date that are used directly in both the Business as conducted on the Closing Date and 3M's electronic products and/or orthopedic casting business, but excluding Components and Materials supplied to the Business by other businesses of 3M.

1.06 IP Agreements. The term "IP Agreements" means those agreements licensing patents to or from 3M that directly and solely relate to the Business as conducted on the Closing Date and are listed in Schedule 1.06, excluding however supplier, distribution, consulting and confidentiality agreements.

1.07 Sublicensed IP Agreement. The term "Sublicensed IP Agreement" means the Automotive Supplier Agreement dated 22nd September 1998 between the Lemelson Medical, Education and Research Foundation, Limited Partnership and 3M.

1.08 Adverse Material Change. The term "Adverse Material Change" shall mean any change that affects the valuation of the Business in a manner that a reasonable buyer, familiar with trends likely to affect the Business, would consider such change in valuing the Business.

ARTICLE II

Sale of Assets

2.01 Purchased Assets. Subject to the terms and conditions hereof, 3M agrees to sell, assign, transfer and convey to the Buyer, and the Buyer agrees to purchase and acquire from 3M, at the Closing (as hereinafter defined) on the Closing Date (as hereinafter defined), all of 3M's right, title and interest, if any, immediately prior to the effective time of the Closing in and to the following assets wherever located:

(a) The fixed assets, machinery, manufacturing equipment, laboratory and test equipment and 3M Product specifications, drawings and manufacturing processes documents and

office equipment used in the Business, including those assets specified, on and offsite, in Schedule 2.01(a).

(b) Raw material, packaging, factory supplies, work in progress and finished goods inventories to the extent related to the 3M Product Line, in an amount consistent with past practices of the Business.

(c) Purchased Intellectual Property as provided in Article VI.

(d) Records to the extent substantially related to the 3M Product Line and the Purchased Assets.

(e) Purchase orders to the extent substantially related to the 3M Product Line, the Purchased Assets or the Business issued by or to 3M in the ordinary course of business.

(f) Subject to Section VI, leases, contracts, agreements and commitments to the extent substantially related to the 3M Product Line, the Purchased Assets or the Business, to the extent assignable and/or transferable.

(g) All registrations, licenses, permits or any other government authorizations relating to the 3M Product Line to the extent transferable, subject to Article VI.

(h) All demonstration units or loaner units relating to the 3M Product Line, including those listed on Schedule 2.01(h).

2.02 Excluded Assets. It is understood and agreed that the following assets of the Business are excluded from Purchased Assets: (i) cash; (ii) accounts receivable; (iii) any items listed in Schedule 2.02 (Excluded Assets); and (iv) excluded intellectual property assets set forth in Section 6.10.

2.03 Retention of Certain Records. It is understood and agreed that 3M reserves the right to retain copies or written records of the items referred to in Sections 2.01(c) and (d) for the purpose of defending any claims, losses, causes of action or lawsuits, including those related to the sale of the 3M Product Line by 3M, and for the purpose of preparing any tax returns or financial statements or reports, provided that 3M shall maintain the confidentiality of such documents and shall promptly notify the Buyer of any lawsuit or claim served upon 3M relating to the Business and/or records or documents.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
as of the day and year first above written.

MINNESOTA MINING AND
MANUFACTURING COMPANY

By: [Signature]
Its: Division Vice President

LINVATEC CORPORATION

By: [Signature]
Its: President

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as of the day and year first above written.

MINNESOTA MINING AND
MANUFACTURING COMPANY

By: *Ed H. Ol*
Its: *Division Vice President*

LINVATEC CORPORATION

By: *Joseph P. Davis*
Its: President

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Schedule 1.04¹
Patents

11 U.S. PTO
09/954526
03/05/01



Country	Application or Serial No.	Patent or Publication No.	Title	First Inventor
AU	52901/86	574580	Bone Stapler Cartridge	Mongeon, Douglas R.
CA	452165	1225307	Orbital Saw Blade	Mongeon, Douglas R.
CA	457516	1237353	Bone Stapler	Bent, John H.
CA	454652	1229769	Bone Stapler	Assell, Robert L.
CA	454653	1224991	Bone Stapler	Skwor, Edward P.
CA	500358	1246411	Bone Stapler Cartridge	Mongeon, Douglas R.
CA	523525	1258789	Bone Stapler	Mongeon, Douglas R.
CH	86.300985.8	192418	Bone Stapler Cartridge	Bent, John H.
DE	84.304356.3	130784	Bone Stapler	Mongeon, Douglas R.
DE	86.309533.7	228834	Bone Stapler	Mongeon, Douglas R.
DE	86.300985.8	192418	Bone Stapler Cartridge	Alexson, Charles E.
DE	87.302789.0	240310	Device For Driving Tools In Orthopedic Surgery	Pitzen, James F.
DE	08/258,338	29508191.6	Orthopedic Surgical Device	Mongeon, Douglas R.
DK	724/86		Bone Stapler Cartridge	Bent, John H.
EP	84.304356.3	130784	Bone Stapler	Mongeon, Douglas R.
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EP	87.302789.0	240310	Device For Driving Tools In Orthopedic Surgery	Klinzing, William P.
EP	97.902011.2		Sterilizable Battery Enclosure	Pitzen, James F.
EP	97.927779.5		Powered Surgical Instruments and Control Unit	Mongeon, Douglas R.
ES	551908	551908	Bone Stapler Cartridge	Bent, John H.
FR	84.304356.3	130784	Bone Stapler	Mongeon, Douglas R.
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HK		285/93	Bone Stapler Cartridge	Alexson, Charles E.
HK		644/95	Device For Driving Tools In Orthopedic Surgery	Mongeon, Douglas R.
IT	86.300985.8	192418	Bone Stapler Cartridge	Bent, John H.
JP	124993/84	1764910	Bone Stapler	Mongeon, Douglas R.
JP	29164/86	1902354	Bone Stapler Cartridge	Mongeon, Douglas R.
JP	290658/86	1985603	Bone Stapler	Pitzen, James F.
JP	08/258,388	3018959	Orthopedic Surgical Device	Klinzing, William P.
JP	507886/98		Sterilizable Battery Enclosure	Pitzen, James F.
JP			Powered Surgical Instruments and Control Unit	Mongeon, Douglas R.
NL	86.300985.8	192418	Bone Stapler Cartridge	Mongeon, Douglas R.
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Schedule 1.04¹

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US	06/492,042	4,819,334	Orbital Saw Blade	Mongeon, Douglas R.
US	06/508,588	4,540,110	Bone Stapler	Bent, John H.
US	06/514,928	4,527,726	Bone Stapler	Assell, Robert L.
US	06/514,929	4,500,025	Bone Stapler	Skwor, Edward P.
US	07/157,439	RE 33,362	Bone Stapler Cartridge	Mongeon, Douglas R.
US	06/806,759	4,648,541	Bone Stapler	Mongeon, Douglas R.
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US	06/847,483	4,736,742	Device For Driving Tools In Orthopedic Surgery	Alexson, Charles E.
US	06/830,674	4,728,876	Orthopedic Drive Assembly	Mongeon, Douglas R.
US	07/185,058	4,901,712	Bone Nailer	Voegeli, Douglas W.
US	07/295,254	4,872,452	Bone Rasp	Alexson, Charles E.
US	07/568,602	5,080,983	Battery	Alexson, Charles E.
US	08/692,886	5,792,573	Rechargeable Battery Adapted To Be Attached To Orthopedic Device	Pitzen, James F.
US	08/258,338	5,553,675	Orthopedic Surgical Device	Pitzen, James F.
US	D-29/046,265	D379795	Battery Housing For Orthopedic Surgical Device	Pitzen, James F.
US	08/576,470	5,697,158	Orthopedic Surgical Device Having A Rotatable Portion And Lock	Klinzing, William P.
US	D-29/024,421	D-364463	Orthopedic Surgical Instrument	Pitzen, James F.
US	08/593,659	5,575,054	Bone Stapler Cartridge	Klinzing, William P.
US	08/319,293	5,540,374	Bone Stapler Cartridge	Klinzing, William P.
US	08/693,917		Sterilizable Battery Enclosure	Klinzing, William P.
US	08/723,800		Powered Surgical Instruments and Control Unit	Pitzen, James F.
WO	US97/00525	WO88/06144	Sterilizable Battery Enclosure	Klinzing, William P.
WO	US97/08997	WO88/14129	Powered Surgical Instruments and Control Unit	Pitzen, James F.

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REISSUE PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James F. Pitzen et al. Examiner:
Patent No.: 5,792,573 Group Art Unit: 1111
Assignee: Linvatec Corporation
Filed: July 24, 1996 Docket No.: 5809.263-US-RE
Title: RECHARGEABLE BATTERY ADAPTED TO BE ATTACHED TO
ORTHOPEDIC DEVICE

CERTIFICATE UNDER 37 CFR 1.10

'Express Mail' mailing label number: EL488196274US

Date of Deposit: 11 August 2000

I hereby certify that this correspondence is being deposited with the United States Postal Service 'Express Mail Post Office To Addressee' service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

By: 
Name: Linda McCormick

REISSUE DECLARATION OF JAMES F. PITZEN,
JEFFREY D. SMITH, AND CHARLES E. ALEXSON

We, James F. Pitzen, Jeffrey D. Smith, and Charles E. Alexson declare as follows:

1. We are citizens of the United States of America, residing at:

James F. Pitzen,
436 Oday Street South,
Maplewood, Minnesota 55119-5540;

Jeffrey D. Smith,
19340 North Newgate Avenue,
Marine on Saint Croix, Minnesota 55047; and

Charles E. Alexson,
12651 W Twin Lake Road,
Hayward, Wisconsin 54843-5314, respectively.

2. We are the original, first and joint inventors of the invention described in Letters Patent No. 5,792,573, granted August 11, 1998, described and claimed in the accompanying application for which we solicit a reissue patent.

3. We have reviewed and understand the contents of the specification and claims of this application, including reissue claims 13-35 added by preliminary amendment and filed along with this declaration.

4. We believe the above-identified patent is partially inoperative by reason of claiming less than we had the right to claim in the patent. Specifically, we believe that we are entitled to generic claims that more adequately cover the subject matter of our invention as we understand and contemplated when originally filing the above-mentioned patent. This subject matter is set forth in reissue claims 13-35 added as part of this reissue application.

5. It was an error to fail to include in the above-identified patent, apparatus claims commensurate in scope with those set forth in reissue claims 13-35.

6. Specifically, it was an error, for example, not to include a claim having the scope of that provided in new claim 13. In claim 13, the language describing the resealable attachment structure has been modified to more adequately cover the subject matter of our invention. It was an error not to include such a claim, with the reworded elements as provided below.

Claim 1	Claim 13
1. A rechargeable battery adapted to be repeatably and releaseably attached to an orthopedic drive assembly, the orthopedic drive assembly having elongate drive and handle portions, a battery receiving portion having a pair of tracks defining flanges, a pair of battery terminals, and a blocking member movable between latched and release positions;	13. A rechargeable battery adapted to be repeatably and releaseably attached to a drive assembly, the drive assembly having battery terminals and a battery receiving portion;
said battery comprising: an autoclavable battery housing having top and bottom portions, at least one cell within the battery housing and a pair of battery contacts adjacent the top portion of the housing and situated to engage the battery terminals of the orthopedic drive assembly,	said battery comprising: a battery housing having top and bottom portions, at least one cell within the battery housing and battery contacts adjacent the housing and situated to engage the battery terminals of the drive assembly;
releasable attachment means for releasably attaching the battery to the battery receiving portion in a direction other than the direction of elongation of the handle portion,	one of the drive assembly and the battery having a pair of tracks defining flanges; and the other of the drive assembly and the battery having grooves configured to receive the flanges of the tracks; wherein the battery may be repeatably and releasably attached to the drive assembly by sliding the battery into and out of engagement with the drive assembly.
said releasable attachment means comprising:	
(a) the battery having a pair of grooves adapted to receive the flanges of the tracks, and	
(b) a slot for receiving the blocking member when the blocking member is in the latched position.	

7. It was also an error to not include a claim having the scope of that provided in new claim 21. Comparing to original claim 1, claim 21 has less rewording than does claim 13 to indicate, broadly, the elements of the Applicants' inventive, rechargeable battery adapted to be repeatably and releasably attached to a drive assembly. Specifically, for example, it was an error to not include a claim directed to a rechargeable battery:

- (a) attached to a drive assembly without the limitation that the drive assembly be "an orthopedic" drive assembly;
- (b) attached to a drive assembly without the limitation that the drive assembly include "a blocking member movable between latched and release positions";
- (c) attached to a drive assembly without the limitation that the drive assembly include "a pair of" battery terminals;
- (d) without the limitation that the rechargeable battery include "a pair of" battery contacts;
- (e) without the limitation that the rechargeable battery be "autoclavable"; and
- (f) comprising a resealable attachment means without the limitation that the resealable attachment means comprise "a slot for receiving the blocking member when the blocking member is in the latched position."

To identify changes made in new claim 21 with respect to original claim 1, set forth below is new claim 21 with the underlined language indicating additions to the text of original claim 1 and language in bolded brackets indicating language that has been deleted from original claim 1.

It was an error not to include a claim having the changes indicated in new claim 21.

21. A rechargeable battery adapted to be repeatably and releasably attached to a[n **orthopedic**] drive assembly, the [orthopedic] drive assembly having elongate drive and handle portions, a battery receiving portion having a pair of tracks defining flanges, and [a pair of] battery terminals[, and a **blocking member movable between latched and release positions**];
said battery comprising:
a[n **autoclavable**] battery housing having top and bottom portions, at least one cell within the battery housing and [a pair of] battery

contacts adjacent the top portion of the housing and situated to engage the battery terminals of the **[orthopedic]** drive assembly, and releasable attachment means for releasably attaching the battery to the battery receiving portion in a direction other than the direction of elongation of the handle portion[, **said releasable attachment means comprising:**

- (a) the battery having a pair of grooves adapted to receive the flanges of the tracks, and**
- (b) a slot for receiving the blocking member when the blocking member is in the latched position].**

8. It was also an error to not include a claim having the scope of that provided in new claim 29. Comparing to original claim 1, claim 29 has less rewording than does claim 13 or 21 to indicate, broadly, the elements of the Applicants' inventive, rechargeable battery adapted to be repeatably and releasably attached to an orthopedic drive assembly. Specifically, for example, it was an error to not include a claim directed to a rechargeable battery:

- (a) without the limitation that the rechargeable battery be "autoclavable";
- (b) attached to a drive assembly without the limitation that the drive assembly include "a blocking member movable between latched and release positions";
- (c) attached to a drive assembly without the limitation that the drive assembly include "a pair of" battery terminals;
- (d) without the limitation that the rechargeable battery include "a pair of" battery contacts; and
- (e) comprising a resealable attachment means without the limitation that the resealable attachment means comprise "a slot for receiving the blocking member when the blocking member is in the latched position."

To identify changes made in new claim 29 with respect to original claim 1, set forth below is new claim 29 with the underlined language indicating additions to the text of original claim 1

and language in bolded brackets indicating language that has been deleted from original claim 1.

It was an error not to include a claim having the changes indicated in new claim 29.

29. A rechargeable battery adapted to be repeatably and releaseably attached to an orthopedic drive assembly, the orthopedic drive assembly having elongate drive and handle portions, a battery receiving portion having a pair of tracks defining flanges, and **[a pair of]** battery terminals[, **and a blocking member movable between latched and release positions]**;

said battery comprising:

a**[n autoclavable]** battery housing having top and bottom portions, at least one cell within the battery housing and **[a pair of]** battery contacts adjacent the top portion of the housing and situated to engage the battery terminals of the orthopedic drive assembly, and releasable attachment means for releasably attaching the battery to the battery receiving portion in a direction other than the direction of elongation of the handle portion[,

said releasable attachment means comprising:

- (a) the battery having a pair of grooves adapted to receive the flanges of the tracks, and**
- (b) a slot for receiving the blocking member when the blocking member is in the latched position].**

9. All errors being corrected in this reissue application arose without any deceptive intention on the part of the applicants.

10. We acknowledge the duty to disclose information which is material to the examination of this application in accordance with 37 C.F.R. § 1.56(a).

11. We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of the Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

12. I authorize Merchant & Gould P.C. to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

James F. Pitzen

Date: _____

Jeffrey D. Smith

Date: _____

Charles E. Alexson

Date: _____



REISSUE PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James F. Pitzen et al. Examiner:
Patent No.: 5,792,573 Group Art Unit: 1111
Assignee: Linvatec Corporation
Filed: July 24, 1996 Docket No.: 54525.000055
Title: RECHARGEABLE BATTERY ADAPTED TO BE ATTACHED TO
ORTHOPEDIC DEVICE

**REISSUE DECLARATION OF JAMES F. PITZEN,
JEFFREY D. SMITH, AND CHARLES E. ALEXSON**

We, James F. Pitzen, Jeffrey D. Smith, and Charles E. Alexson declare as follows:

1. We are citizens of the United States of America, residing at:

James F. Pitzen,
436 Oday Street South,
Maplewood, Minnesota 55119-5540;

Jeffrey D. Smith,
19340 North Newgate Avenue,
Marine on Saint Croix, Minnesota 55047; and

Charles E. Alexson,
12651 W Twin Lake Road,
Hayward, Wisconsin 54843-5314, respectively.

2. We are the original, first and joint inventors of the invention described in Letters Patent No. 5,792,573, granted August 11, 1998, described and claimed in the accompanying application for which we solicit a reissue patent.

3. We have reviewed and understand the contents of the specification and claims of this application, including reissue claims 13-35 added by preliminary amendment and filed along with this declaration.

4. We believe the above-identified patent is partially inoperative by reason of claiming less than we had the right to claim in the patent. Specifically, we believe that we are entitled to claims that are not limited to application to orthopedic devices, and that more adequately cover the subject matter of our invention as we understand and contemplated when originally filing the above-mentioned patent. In fact, during prosecution of the parent application serial No. 08/258,338, that ultimately resulted in the issuance of U.S. Patent No. 5,792,573 (the patent referred to herein), the Examiner issued a restriction requirement and stated that the subject matter in the claims ultimately issued in U.S. Patent No. 5,792,573 could be utilized in other power tools, such as power screwdriver. This subject matter, which does not limit the battery's utility to an orthopedic device, is set forth in reissue claims 13-35 added as part of this reissue application.

5. It was an error to fail to include in the above-identified patent, claims commensurate in scope with those set forth in reissue claims 13-35.

6. Specifically, it was an error, for example, not to include a claim having the scope of that provided in new claim 13. In claim 13, the language describing the releasable attachment structure has been modified to more adequately cover the subject matter of our invention. It was an error not to include such a claim, with the reworded elements as provided below.

Claim 1	Claim 13
1. A rechargeable battery adapted to be repeatably and releasably attached to an orthopedic drive assembly, the orthopedic drive assembly having elongate drive and handle portions, a battery receiving portion having a pair of tracks defining flanges, a pair of battery terminals, and a blocking member movable between latched and release positions;	13. A rechargeable battery adapted to be repeatably and releasably attached to a drive assembly, the drive assembly having battery terminals and a battery receiving portion;
said battery comprising: an autoclavable battery housing having top and bottom portions, at least one cell within the battery housing and a pair of battery contacts adjacent the top portion of the housing and situated to engage the battery terminals of the orthopedic drive assembly,	said battery comprising: a battery housing having top and bottom portions, at least one cell within the battery housing and battery contacts adjacent the housing and situated to engage the battery terminals of the drive assembly;
releasable attachment means for releasably attaching the battery to the battery receiving portion in a direction other than the direction of elongation of the handle portion,	one of the drive assembly and the battery having a pair of tracks defining flanges; and the other of the drive assembly and the battery having grooves configured to receive the flanges of the tracks; wherein the battery may be repeatably and releasably attached to the drive assembly by sliding the battery into and out of engagement with the drive assembly.
said releasable attachment means comprising:	
(a) the battery having a pair of grooves adapted to receive the flanges of the tracks, and	
(b) a slot for receiving the blocking member when the blocking member is in the latched position.	

7. It was also an error to not include a claim having the scope of that provided in new claim 21. Comparing to original claim 1, claim 21 has less rewording than does claim 13 to

indicate, broadly, the elements of the Applicants' inventive, rechargeable battery adapted to be repeatably and releasably attached to a drive assembly. Specifically, for example, it was an error to not include a claim directed to a rechargeable battery:

- (a) attached to a drive assembly without reciting that the drive assembly be "an orthopedic" drive assembly;
- (b) attached to a drive assembly without reciting that the drive assembly includes "a blocking member movable between latched and release positions";
- (c) attached to a drive assembly without reciting that the drive assembly include "a pair of" battery terminals;
- (d) without reciting that the rechargeable battery include "a pair of" battery contacts;
- (e) without reciting that the rechargeable battery be "autoclavable"; and
- (f) comprising a releasable attachment means without reciting that the releasable attachment means comprise "a slot for receiving the blocking member when the blocking member is in the latched position."

To identify changes made in new claim 21 with respect to original claim 1, set forth below is new claim 21 with the underlined language indicating additions to the text of original claim 1 and language in bolded brackets indicating language that has been deleted from original claim

1. It was an error not to include a claim having the changes indicated in new claim 21.

21. A rechargeable battery adapted to be repeatably and releasably attached to a[n orthopedic] drive assembly, the [orthopedic] drive assembly having elongate drive and handle portions, a battery receiving portion having a pair of tracks defining flanges, and [a pair of] battery terminals[, and a blocking member movable between latched and release positions];

said battery comprising:

a[n autoclavable] battery housing having top and bottom portions, at least one cell within the battery housing and [a pair of] battery contacts adjacent the top portion of the housing and situated to engage the battery terminals of the [orthopedic] drive assembly, and

releasable attachment means for releasably attaching the battery to the battery receiving portion in a direction other than the direction of elongation of the handle portion[,

said releasable attachment means comprising:

- (a) the battery having a pair of grooves adapted to receive the flanges of the tracks, and
- (b) a slot for receiving the blocking member when the blocking member is in the latched position].

8. It was also an error to not include a claim having the scope of that provided in new claim 29. Comparing to original claim 1, claim 29 has less rewording than does claim 13 or 21 to indicate, broadly, the elements of the Applicants' inventive, rechargeable battery. Specifically, for example, it was an error to not include a claim directed to a rechargeable battery:

- (a) without reciting that the rechargeable battery be "autoclavable";
- (b) attached to a drive assembly without reciting that the drive assembly include "a blocking member movable between latched and release positions";
- (c) attached to a drive assembly without reciting that the drive assembly include "a pair of" battery terminals;
- (d) without reciting that the rechargeable battery include "a pair of" battery contacts; and
- (e) comprising a releasable attachment means without reciting that the releasable attachment means comprise "a slot for receiving the blocking member when the blocking member is in the latched position."

To identify changes made in new claim 29 with respect to original claim 1, set forth below is new claim 29 with the underlined language indicating additions to the text of original claim 1 and language in bolded brackets indicating language that has been deleted from original claim

1. It was an error not to include a claim having the changes indicated in new claim 29.

29. A rechargeable battery adapted to be repeatably and releaseably attached to an orthopedic drive assembly, the orthopedic drive assembly having elongate drive and handle portions, a battery receiving portion having a pair of tracks defining flanges, and **[a pair of]** battery terminals[, **and a blocking member movable between latched and release positions]**;

said battery comprising:

a[n autoclavable] battery housing having top and bottom portions, at least one cell within the battery housing and **[a pair of]**

battery contacts adjacent the top portion of the housing and situated to engage the battery terminals of the orthopedic drive assembly, and
releasable attachment means for releasably attaching the battery to the battery receiving portion in a direction other than the direction of elongation of the handle portion[,
said releasable attachment means comprising:
(a) the battery having a pair of grooves adapted to receive the flanges of the tracks, and
(b) a slot for receiving the blocking member when the blocking member is in the latched position].

9. All errors being corrected in this reissue application arose without any deceptive intention on the part of the applicants.

10. We acknowledge the duty to disclose information which is material to the examination of this application in accordance with 37 C.F.R. § 1.56(a).

11. We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of the Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

12. I authorize Hunton & Williams. to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

James F. Pitzen

Date: _____

Jeffrey D. Smith

Date: _____

Charles E. Alexson

Date: _____



REISSUE PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James F. Pitzen et al. Examiner:
Patent No.: 5,792,573 Group Art Unit: 1111
Assignee: Linvatec Corporation
Filed: July 24, 1996 Docket No.: 5809.263-US-RE
Title: RECHARGEABLE BATTERY ADAPTED TO BE ATTACHED TO
ORTHOPEDIC DEVICE

CERTIFICATE UNDER 37 CFR 1.10

'Express Mail' mailing label number: EL488196274US

Date of Deposit: 11 August 2000

I hereby certify that this correspondence is being deposited with the United States Postal Service 'Express Mail Post Office To Addressee' service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

By: *Linda McCormick*

Name: Linda McCormick

CERTIFICATE UNDER 37 C.F.R. § 3.73(b) and
CONSENT BY ASSIGNEE UNDER 37 C.F.R. § 1.172

Assistant Commissioner for Patents
Box Reissue
Washington, D.C. 20231

Linvatec Corporation ("Linvatec"), a corporation organized and existing under and by virtue of the laws of the State of Florida, and having an office and place of business at 11311 Concept Blvd, Largo, Florida, 33773, certifies that it is the assignee of the entire right, title and interest in the patent identified above by virtue of an agreement between Linvatec and the original assignee, Minnesota Mining And Manufacturing Company, a corporation organized and existing under and by virtue of the laws of Delaware. The original assignment executed by the Inventors of the above-identified patent in favor of Minnesota Mining And Manufacturing was recorded at Reel 7042, Frame 560. Pursuant to 37 C.F.R. § 3.73(b), a copy of the relevant portions of the agreement establishing Linvatec's ownership in the patent identified above is attached hereto.

The Assignee, Linvatec, hereby consents to the accompanying application for reissue of U.S. Patent No. 5,792,573.

The undersigned has reviewed all the documents in the chain of title of the patent application identified above and, to the best of undersigned's knowledge and belief, title is in the assignee identified above.

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of the assignee.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

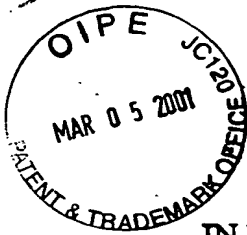
Please direct all correspondence in this application to:

Bryan K. Phillips:
Merchant & Gould P.C.
P.O. Box 2903
Minneapolis, MN 55402-0903
(612) 332-5300

Dated: 11 August 2000

By: Gene Warzecha

Gene Warzecha
Assistant Secretary
Linvatec Corporation



REISSUE PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James F. Pitzen et al. Examiner:
Patent No.: 5,792,573 Group Art Unit: 1111
Assignee: Linvatec Corporation
Filed: July 24, 1996 Docket No.: 5809.263-US-RE
Title: RECHARGEABLE BATTERY ADAPTED TO BE ATTACHED TO
ORTHOPEDIC DEVICE

CERTIFICATE UNDER 37 CFR 1.10
Express Mail mailing label number: E1488196274US
Date of Deposit: 11 August 2000
I hereby certify that this correspondence is being deposited with the United States Postal Service Express Mail
Post Office To Addressee's service under 37 CFR 1.10 on the date indicated above and is addressed to Box 7,
Assistant Commissioner for Patents, Washington, D.C. 20231.
By: *Linda McCormick*
Name: Linda McCormick

OFFER TO SURRENDER U.S. PATENT NO. 5,792,573
UNDER 37 C.F.R. § 1.178

Assistant Commissioner for Patents
Box Reissue
Washington, D.C. 20231

Dear Sir:

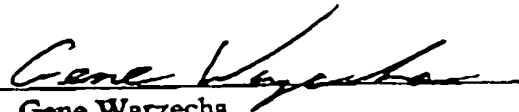
The Applicants of the accompanying application for the reissue of Letters Patent for U.S. Patent No. 5,792,573, entitled "RECHARGEABLE BATTERY ADAPTED TO BE ATTACHED TO ORTHOPEDIC DEVICE," granted to Pitzen et al. on August 11, 1998, hereby offer to surrender said Letters Patent, or if the original is lost or inaccessible, an affidavit to such fact will be submitted before allowance of the above-identified application for reissue. A copy of the issued U.S. Patent No. 5,792,573 is submitted herewith. The offer to surrender is on behalf of

Linvatec Corporation, the assignee of all rights, title and interest in U.S. Patent No. 5,792,573,
who assents to this reissue application, as set forth in the accompanying Certificate Under 37
C.F.R. § 3.73(b) and Consent By Assignee Under 37 C.F.R. §1.172.

Respectfully submitted,

Dated: 11 August 2000

By:


Gene Warzecha
Assistant Secretary
Linvatec Corporation